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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Gregg D. Scheller

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EXAMINER

CHEN, VICTORIA W

ART UNIT

PAPER NUMBER

3739

NOTIFICATION DATE

DELIVERY MODE

02/05/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@THOMPSONCOBURN.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/586,018	<b>Applicant(s)</b> SCHELLER ET AL.	
	<b>Examiner</b> VICTORIA W. CHEN	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12 and 13 is/are rejected.
- 7) ☒ Claim(s) 11, 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

The indicated allowability of claim 10 is withdrawn in view of the newly interpreted reference(s) to Richards. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1, 3-10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Richards (US 5634918).**

Regarding claim 1, Richards discloses an elongate rod [14] adapted to be attached to a surgical instrument head [col. 4, ll. 10-12], a piston [34] mounted on the rod adjacent the rod distal end [Fig. 3], a forward grip member [20] having a plurality of resilient arms [20T, 20H, col. 3, ll. 25-31] that extend along the rod to operatively engage the piston [via elements 22 and 32], whereby manual movement of the arm distal ends radially inwardly [Fig. 4], moves the piston axially toward the rod distal end [Fig. 4], and movement of the piston axially away from the rod distal end moves the arm distal ends radially outwardly [Fig. 3]. If the first position is interpreted as seen in Fig. 4, and the second position is interpreted as seen in Fig. 3, the second radial spacing between elements 20H of each arm is larger than the first radial spacing.

Regarding claim 3, Richards discloses an elongate rod [14] adapted to be attached to a surgical instrument head [col. 4, ll. 10-12], a piston [34] mounted on the rod adjacent the rod

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distal end [Fig. 3], a forward grip member [20] adapted to have axial movement between first and second positions of the forward grip member relative to the rod [Figs. 3 and 4, 20F], a plurality of resilient arms [20T, 20H, col. 3, ll. 25-31] integrally connected with the forward grip member [Fig. 3a] which operatively engage the piston [via elements 22 and 32], whereby manual movement of the arm distal ends radially inwardly [Fig. 4], moves the piston axially toward the rod distal end [Fig. 4], and movement of the piston axially away from the rod distal end moves the arm distal ends radially outwardly [Fig. 3]. If the first position is interpreted as seen in Fig. 4, and the second position is interpreted as seen in Fig. 3, the second radial spacing between elements 20H of each arm is larger than the first radial spacing.

Regarding claim 4, Richards discloses a connector [28] at the rod distal end that attaches the rod to a surgical instrument head [col. 4, ll. 10-12].

Regarding claim 5, Richards discloses the rod connector is adapted for removably attaching the surgical instrument heads [col. 8, ll. 56-57].

Regarding claim 6, Richards discloses the connector [28] has a center bore through it, and the piston [34] has proximal and distal ends, the piston distal end extending through the connector center bore [Fig. 4].

Regarding claim 7, since a slot is defined as “a narrow opening for receiving or admitting something”<sup>1</sup>, the part of the lumen [labeled 30] through near the distal end of rod [14] which is adjacent to the connector [28] as seen in Fig. 3, is interpreted as the slot, while the piston proximal end [labeled at 34] is positioned in the slot, and the piston distal end [labeled 34F] is positioned in the connector bore [28].

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Regarding claim 8, Richards discloses an elongate rod [14] adapted to be attached to a surgical instrument head [col. 4, ll. 10-12], a piston [34] mounted on the rod adjacent the rod distal end [Fig. 3], a forward grip member [20] adapted for axial movement between first and second positions of the forward grip member relative to the rod [20G Figs. 3 and 4, 20F], a plurality of resilient arms [20T, 20H] operatively connected with the piston [via elements 22 and 32] and a ring [22, 32] mounted on the rod wherein the ring is adapted to have reciprocating movement of the ring toward the rod proximal end and toward the rod distal end [col. 4, ll. 39-41], the ring engaging with the piston [Fig. 3], whereby manual movement of the arms radially inwardly moves the piston axially toward the rod distal end [Fig. 4], and movement of the piston axially away from the rod distal end moves the arm distal ends radially outwardly [Fig. 3]. If the first position is interpreted as seen in Fig. 4, and the second position is interpreted as seen in Fig. 3, the second radial spacing between elements 20H of each arm is larger than the first radial spacing.

Regarding claim 9, Richards discloses the ring [22, 32] has a sliding surface which the resilient arms [20H, 20H] engage [24'], the resilient arms moving between the first radial spacing between the arms and the second radial spacing between the arms in response to the sliding movement of the arms on the ring sliding surface [Figs. 3 and 4].

Regarding claim 10, Richards discloses the plurality of arms [20T, 20H] extending from the forward grip member along the rod, the plurality of arms having distal ends that engage with the ring [22, 32, Fig. 3], the axial movement of the forward grip member relative to the rod [20F, Figs. 3 and 4] moving the arms relative to the rod and ring.

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<sup>1</sup> slot." *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. 06 Dec. 2007. <Dictionary.com

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Regarding claim 12, Richards discloses the plurality of arms [20T, 20H] extending from the forward grip member [20], the arms operatively engaging with the piston [via elements 22 and 32], the movement of the forward grip member relative to the rod [at 20F] moving the distal ends of the arms relative to the rod [Figs. 3 and 4].

Regarding claim 13, Richards discloses the plurality of arms being circumferentially arranged around the rod and piston [col. 3, ll. 25-31].

### ***Allowable Subject Matter***

Claim 2 is allowed.

Claims 11 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments, filed 10/14/08, with respect to the rejection(s) of claim(s) 1, 3-7, 9, 12 and 13 under 35 USC 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a new interpretation of Richards (US 5634918).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA W. CHEN whose telephone number is (571)272-3356. The examiner can normally be reached on M-F 8:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Linda C Dvorak/  
Supervisory Patent Examiner, Art Unit  
3739

/Victoria W Chen/  
Examiner, Art Unit 3739